



DIRK KEMPTHORNE  
GOVERNOR

January 9, 2002

VIA FACSIMILE AND U.S. MAIL

The Honorable Spencer Abraham  
U.S. Department of Energy  
1000 Independence Ave., S.W.  
Washington, DC 20585

Dear Secretary Abraham:

This concerns the long-running controversy regarding the cleanup of Pit 9 at the Idaho National Engineering and Environmental Laboratory (INEEL). This is not a matter of your making. You inherited this one and I have faith in you, Spence, to finally help us achieve a solution.

It has been over thirty years since your predecessor agency, the Atomic Energy Commission, promised that transuranic waste buried at the INEEL would be removed "*within the decade*." It has been nearly ten years since the Department of Energy (DOE) committed to the Pit 9 project and nearly five years since the agreement to restructure the project when DOE failed to perform. Over two years ago, Secretary Richardson vowed to me his "*unwavering commitment to the expeditious remediation of Pit 9*." It has been over nine months since DOE invoked the most recent vintage of dispute resolution, but there is no resolution in sight. So you can well imagine why Idaho has little confidence in DOE's determination to perform on its obligations.

Idaho has gone well above and beyond the legal requirements for resolving our differences. We have negotiated in good faith and worked with Idaho's congressional delegation to address what DOE stated was a key stumbling block—adequate funding to begin waste cleanup, *including buried waste retrieval*. I have never vacillated on my position regarding the need for retrieval of plutonium-contaminated waste from Pit 9.

DOE's position that the 1995 Court Settlement *does not* include removal of buried transuranic waste from the State of Idaho is particularly distressful to me.

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Idaho's position is firm. The 1995 Court Settlement requires DOE to remove transuranic waste located at INEEL, buried or otherwise. I will vigorously oppose any DOE shipments of spent fuel into Idaho until the federal government recognizes this obligation and provides Idaho with solid assurances it will perform under the 1995 Court Settlement.

I am sure you will not miss the irony in the State of Idaho demanding the removal of transuranic waste that was never generated in Idaho, but primarily in Colorado. It would be different if Idaho were a federally designated waste repository. But the INEEL is not such a repository, it never has been, and it never will be while I am Governor.

The above prefaces my reply to DOE Acting Manager Mark Frei's letter of December 14, 2001, which elevates the dispute regarding the Pit 9 project for my consideration. Under the terms of the 1991 Federal Facilities Agreement and Consent Order (FFA/CO), I have twenty-one days to reach a decision on the matter.

Before addressing the substance of this dispute, I am concerned about the process for our discussions. Although Mr. Frei's letter requests a meeting between the two of us and United States Environmental Protection Agency (USEPA) Administrator Christine Todd Whitman, neither of the federal staffs has yet contacted my office to coordinate schedules and let us know when you are both available to come to Idaho. Our respective legal counsel have agreed that the twenty-one day time frame for my decision would be stayed pending our meeting, but I do not intend to wait indefinitely before moving this matter forward.

To prepare for the substance of our meeting, be advised that the cleanup of Pit 9 and other buried transuranic waste at INEEL has had my utmost personal attention since I became Governor of Idaho, and, prior to that, as United States Senator. I have closely followed the current dispute.

As already noted, it has been over nine months since DOE invoked dispute resolution under our 1991 Agreement, which followed after Idaho and USEPA denied DOE's request of seven- to thirteen-year extensions for Pit 9 project deadlines. At DOE's request, the Idaho Department of Environmental Quality (DEQ) and USEPA agreed to four months' worth of extensions to the timeframe for resolving the dispute. When DOE did not follow through on commitments it made in April and May 2001 to support extending dispute resolution discussions, DEQ Director Steve Allred and USEPA Acting Regional Administrator Chuck Findley concluded further discussions with their DOE counterpart would be unproductive.

I received a briefing on DEQ Director Steve Allred's Memorandum Decision and Order of July 23, 2001 before it was issued and have closely followed subsequent developments. After receiving Mr. Allred's Order, Assistant Secretary Roberson requested a second chance to resolve the dispute before elevating it to our level. We

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agreed that Mr. Allred would participate in further negotiations only after Assistant Secretary Roberson gave her personal commitment with a new, refocused negotiation team, which included a member of your staff.

Our representatives agreed in September 2001, upon a streamlined technical approach for the Pit 9 project. As noted in my letter to you of November 1, 2001, however, the limited schedule and authority of the DOE participants in their September 5, 2001 visit prevented the parties from agreeing upon mechanisms needed to guarantee DOE's performance where our two prior agreements for Pit 9 proved unsuccessful due to DOE's failure to perform as agreed. Nor did they address the critical linkage between information from the Pit 9 project and the upcoming decision for cleanup of the INEEL's larger buried waste area.

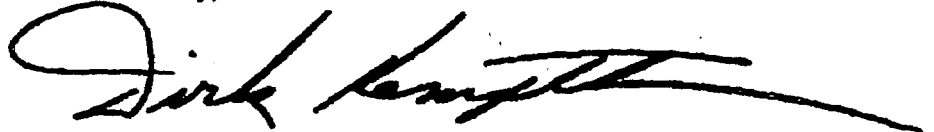
Unfortunately, DOE never committed to a second meeting to resolve these outstanding issues despite the express willingness of DEQ and USEPA representatives to meet to evaluate options to their stated settlement positions. The DOE also did not respond to a November 2001 request from our attorneys for a legal analysis to facilitate such a discussion. Instead, I was informed that the parties engaged in a series of disjointed phone calls, the outcome of which DOE mischaracterized, both in writing and later in a direct meeting with me.

I am prepared to enter into the substance of these discussions and work diligently for their resolution. For example, I am disposed to look favorably on the current *technical* approach proposed by DOE to deal with Pit 9. In fact, this technical proposal is, in essence, the same one initially proposed when the Pit 9 project was conceived nearly 10 years ago and again in 1997, but nothing has happened. Is it any wonder why Idaho questions DOE's determination to perform on its numerous previous commitments?

I have confidence in you, Spence. Armed with this perspective, you can understand why Idaho will not merely accept DOE's word or rely on internal DOE mechanisms as the basis to meet its commitments to Idaho.

As President Bush's able representative on this matter, I know you will work with me to provide the solutions we seek. We are at a crucial moment in a long-running controversy which is now poised for resolution. But as we proceed, you must recognize that Idaho deserves action now and her citizens cannot be subject to more broken promises.

Sincerely,

A large, stylized handwritten signature in black ink, which appears to read "Dirk Kempthorne". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

DIRK KEMPTHORNE  
Governor

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DK:lmb

cc:    The Honorable Christine Todd Whitman  
          The Honorable Larry Craig  
          The Honorable Mike Crapo  
          The Honorable Mike Simpson  
          The Honorable Alan G. Lance

cc: whittman,JP,JC,Craig,L,Crapo,MS,Simpson,AL